

ESTTA Tracking number: **ESTTA275542**

Filing date: **04/01/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Bayer HealthCare LLC
Granted to Date of previous extension	04/01/2009
Address	100 Bayer Road Pittsburgh, PA 15205 UNITED STATES
Attorney information	Raymond I. Geraldson, Jr. Pattishall McAuliffe Newbury Hilliard et al 311 South Wacker Drive, Suite 5000 Chicago, IL 60606 UNITED STATES rig@pattishall.com, pb@pattishall.com, stl@pattishall.com, lrb@pattishall.com Phone:312-554-8000

Applicant Information

Application No	79056313	Publication date	12/02/2008
Opposition Filing Date	04/01/2009	Opposition Period Ends	04/01/2009
International Registration No.	0970777	International Registration Date	07/02/2008
Applicant	BIOALLIANCE PHARMA 59 Boulevard du G�n�ral Martial Valin F-75015 PARIS FRANCE		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical compositions for the treatment of herpes
--

Applicant Information

Application No	79056314	Publication date	12/02/2008
Opposition Filing Date	04/01/2009	Opposition Period Ends	
International Registration No.	0970778	International Registration Date	07/02/2008
Applicant	BIOALLIANCE PHARMA 59 Boulevard du G�n�ral Martial Valin F-75015 PARIS		

	FRANCE
--	--------

Goods/Services Affected by Opposition


Class 005.

All goods and services in the class are opposed, namely: Pharmaceutical compositions for the treatment of herpes

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	523578	Application Date	12/08/1948
Registration Date	04/04/1950	Foreign Priority Date	NONE
Word Mark	1 ONE A DAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U018 (International Class 005). First use: First Use: 1940/09/30 First Use In Commerce: 1940/09/30 VITAMIN TABLETS		

U.S. Registration No.	634318	Application Date	11/17/1955
Registration Date	09/11/1956	Foreign Priority Date	NONE
Word Mark	ONE A DAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U018 (International Class 005). First use: First Use: 1940/09/30 First Use In Commerce: 1940/09/30 VITAMIN TABLETS		


U.S. Registration No.	2298852	Application Date	02/02/1998
Registration Date	12/07/1999	Foreign Priority Date	NONE
Word Mark	1 ONE A DAY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1998/03/02 First Use In Commerce: 1998/03/02 Nutritional Supplements

U.S. Registration No.	2312429	Application Date	02/02/1998
Registration Date	01/25/2000	Foreign Priority Date	NONE
Word Mark	ONE A DAY KIDS COMPLETE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1998/05/01 First Use In Commerce: 1998/05/01 Nutritional Supplements		

U.S. Registration No.	2526180	Application Date	09/07/2000
Registration Date	01/01/2002	Foreign Priority Date	NONE
Word Mark	ONE-A-DAY ACTIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/02/26 First Use In Commerce: 2001/02/26 Nutritional supplements		

U.S. Registration No.	2602975	Application Date	03/15/2001
Registration Date	07/30/2002	Foreign Priority Date	NONE
Word Mark	ONE A DAY KIDS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2001/08/06 First Use In Commerce: 2001/08/06 Nutritional supplements

U.S. Registration No.	2724266	Application Date	06/28/2002
Registration Date	06/10/2003	Foreign Priority Date	NONE
Word Mark	ONE A DAY WEIGHT SMART		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/11/15 First Use In Commerce: 2002/11/15 Nutritional supplements		

Attachments	71570216#TMSN.gif (1 page)(bytes) 75426796#TMSN.gif (1 page)(bytes) 75426797#TMSN.gif (1 page)(bytes) 78053318#TMSN.gif (1 page)(bytes) BioAlliance Pharma NO.PDF (5 pages)(48975 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/pb/
Name	Phillip Barengolts
Date	04/01/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**




In the matter of Application Ser. Nos. 79-056,313 (ACYCLADAY) and 79-056,314 (LABIADAY)
Published in the *Official Gazette* on December 2, 2008 in Class 5

BAYER HEALTHCARE LLC,)	
)	
Opposer,)	Opposition No. _____
)	
v.)	
)	
BIOALLIANCE PHARMA,)	
)	
Applicant.)	

CONSOLIDATED NOTICE OF OPPOSITION

Bayer HealthCare LLC, a Delaware limited liability company having offices in Pittsburgh, Pennsylvania, believes it will be damaged by registration of the marks shown at App. Ser. Nos. 79-056,313 and 79-056,314 (the “Applications”) and files this notice of opposition pursuant to 37 C.F.R. § 2.104(b). The grounds for opposition are stated below.

1. Opposer and its predecessors have for many years been engaged in the manufacture, distribution, advertising and sale of products in the medical and healthcare fields, including vitamins and supplements.
2. Since long before the filing date of the Application, Opposer and its predecessors have continuously used the trademark ONE A DAY in commerce throughout the United States in connection with the advertising, promotion and sale of vitamins and nutritional supplements.
3. Opposer owns the trademark registrations shown below, all comprised of its ONE A DAY trademark, and all of which are incontestable pursuant to 15 U.S.C. § 1065 and 1115(b).

MARK	REG. NO.	REG. DATE	GOODS
	523,578	April 4, 1950	vitamin tablets
ONE A DAY	634,318	September 11, 1956	vitamin tablets
	2,298,852	December 7, 1999	nutritional supplements
ONE A DAY KIDS COMPLETE	2,312,429	January 25, 2000	nutritional supplements
ONE-A-DAY ACTIVE	2,526,180	January 1, 2002	nutritional supplements
	2,602,975	July 30, 2002	nutritional supplements
ONE A DAY WEIGHT SMART	2,724,266	June 10, 2003	nutritional supplements

4. By virtue of Opposer's and its predecessors' extensive sales, advertising and promotion of nutritional supplements under their ONE A DAY trademark, Opposer and its predecessors have built up and Opposer now owns valuable goodwill symbolized by its ONE A DAY trademark.

5. By virtue of the aforesaid extensive sales, advertising and promotion, the ONE A DAY mark is famous, and achieved that fame long prior to the priority dates claimed in the Applications.

6. Upon information and belief, neither applicant nor any predecessor or related company of applicant has a claim of right in the mark ACYCLADAY prior to January 24, 2008, the priority date claimed in App. Ser. No. 79-056,313.

7. Upon information and belief, neither applicant nor any predecessor or related company of applicant has a claim of right in the mark LABIADAY prior to January 24, 2008, the priority date claimed in App. Ser. No. 79-056,314.

8. Use of the ACYCLADAY and LABIADAY marks shown in the Applications for “pharmaceutical compositions for the treatment of herpes” is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of applicant’s goods in that purchasers are likely to believe that applicant’s goods are Opposer’s goods, or are in some way legitimately connected with, licensed or approved by the Opposer.

9. Use of the marks shown in the Applications in connection with the goods stated therein is likely to dilute the distinctiveness of Opposer’s famous ONE A DAY mark.

10. Applicant’s use of the marks shown in the Applications is without Opposer’s consent or permission.

Opposer submits the requisite filing fee of \$600.00. Please debit any deficiency from or credit any overpayment to Account No. 16-0650, and address all correspondence to Raymond I. Geraldson, Jr., Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606.

Dated: April 1, 2009

Respectfully submitted,

PATTISHALL, MCAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

By: /Phillip Barengolts/
Raymond I. Geraldson, Jr.
Phillip Barengolts
Scott T. Lonardo
311 South Wacker Drive
Suite 5000
Chicago, Illinois 60606
(312) 554-8000

Attorneys for Bayer HealthCare LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served by first-class mail on April 1, 2009, upon the following:

BREDEMA
38 avenue de L'Opéra
F-75002 PARIS
FRANCE

BIOALLIANCE PHARMA
59 Boulevard du Général Martial Valin
F-75015 PARIS
FRANCE

Guillaume Mortreux
Novagraaf France SA
BREDEMA
122, rue Edouard Vaillant
92593 LEVALLOIS-PERRET
FRANCE

/Phillip Barengolts/

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this Notice of Opposition is being electronically transmitted to the Patent and Trademark Office on April 1, 2009.

/Phillip Barengolts/